

August 28, 2006

1

TOWN OF NEW WINDSOR  
ZONING BOARD OF APPEALS  
AUGUST 28, 2006

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN  
KIMBERLY GANN  
KATHLEEN LOCEY  
ERIC LUNDSTROM  
PAT TORPEY

ALSO PRESENT: MICHAEL BABCOCK  
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.  
ZONING BOARD ATTORNEY

MYRA MASON  
ZONING BOARD SECRETARY

REGULAR\_MEETING

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MR. KANE: I'd like to call to order the August 28,  
2006 meeting of the New Windsor Planning Board.

ANDREW\_PERKAL\_(06-49)

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Mr. Andrew Perkal appeared before the board for this proposal.

MR. KANE: Request for 76 square foot area and five foot height for existing free-standing sign at 436 Blooming Grove Turnpike. Come right up here, tell us what you want to do. Please speak loudly enough so this young lady over here can hear you.

MR. PERKAL: We came to this property about a year ago, we have been renovating it, this is the sign that was in place and it seems after I did some research that it was not the proper size and it's never properly filed for so I'm trying to rectify this and to file properly for the sign. What we'd like to do given the size of the parking lot in this general area and I have some pictures for you to look at is to sort of leave the sign as it is, we had to do sets of renovations it seems after we bought it, we don't know it was actually condemned, we had to rebuild it, we want to leave the sign as it is, just sort of enhance it to put it more in keeping with the motif that we've done with the shopping center so it's very bare right now. We want to leave it the way it is and just put like two posts on either side to give it a nicer flavor period feel to it.

(Whereupon, Mr. Krieger entered the room.)

MR. KAEN: Seems like it would go with what you're doing. The only issue that I might have and I'm willing to listen to it you want to raise the height of the sign?

MR. PERKAL: No.

MR. BABCOCK: They want to put a little shed type roof on it.

MR. PERKAL: I made a modification on that, it's actually I want to keep the height the way it is, I changed my mind, can we throw that out? I redesigned and instead of a shed we want to leave the shed just add two posts on either side.

MR. BABCOCK: Is this an extra copy for me?

MS. GANN: This is what we should be looking at?

MR. PERKAL: Exactly.

MR. KANE: All we're dealing with is square footage?

MR. BABCOCK: That's correct.

MR. LUNDSTROM: Size of the sign not going to increase?

MR. PERKAL: No.

MR. LUNDSTROM: What's the total square footage of the sign that's going to be there at the end?

MR. KANE: Proposed 140 square feet.

MR. PERKAL: That's for two signs it will be 70 per sign.

MR. BABCOCK: Yeah, it's 7 foot wide and 10 foot high, it's a square, it's actually got a rounded top.

MR. KANE: Right, we always square off. Any illumination on the light, the sign rather?

MR. PERKAL: Right now the sign is illuminated, we're considering going with the more antique flavor with the bold engraved signs in which case it would be an outside light shining on it rather than the internal.

MR. KANE: No neon?

MR. PERKAL: No, no because we feel it's too modern and we want to keep more traditional.

MR. KANE: Lighting won't be distracting to any cars going up and down 94?

MR. PERKAL: No, it would have to be a light aimed exactly at the sign.

MR. LUNDSTROM: Not going to be flashing?

MR. PERKAL: No.

MR. KANE: Any further questions for the board? I'll accept a motion.

MS. GANN: I'll make a motion that we schedule a public hearing for Andrew Perkal for his request for a 76 square foot area and 5 foot height for existing freestanding sign at 436 Blooming Grove Turnpike.

MR. TORPEY: I will second that motion.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE
MR. KANE	AYE

MR. KANE: What we do we hold a preliminary meeting so we can get an idea of what we want to do. At the public hearing, you're going to go through the same kind of questioning but then we'll open it up to the public. Okay?

MR. PERKAL: Thank you very much.

JAMES\_DUFFY\_(06-50)

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Daniel Bloom, Esq. appeared before the board for this proposal.

MR. KANE: Request for use variance to permit a single family dwelling in a C zone at 23 Old Riley Road.

MR. BLOOM: Good evening, ladies and gentlemen, my name is Dan Bloom, I represent the applicants, Mr. and Mrs. Duffy who are requesting a use variance, Mr. Chairman, or an interpretation to give you a little bit of background. The property is about 3.2 acres in size, it's located just off Route 94, it's bounded by Old Riley Road, Route 94, the veteran's cemetery on the north and the railroad tracks on the east and the property is zoned C. Unfortunately, it can't very readily be sold for that purpose because my clients live adjacent to it, there are other residences around it, the property is too small for commercial use, they have offered it for that purpose and in fact we can't, my clients have been unable to get brokers to even take the listing because it's just an impossible site for that purpose. And so we're here today requesting a use variance to bring it back to residential purposes so my clients can either construct a residence on it or offer it for sale for that purpose. My clients are elderly, they'd like to, you know, secure some additional income in their retirement and as I say, they have been trying to do that without success. Brokers will not even take a listing on it under the present zoning. For that reason, we're going to be coming and I will be presenting testimony on, Mr. Chairman, on behalf of my clients through a certified real estate appraiser and their accountant for purposes of demonstrating the economic hardship on the fact they can't even obtain any return at all, it's negative by the time they pay taxes and what have you on the property.

MR. KANE: You had said use variance or interpretation?

MR. BLOOM: Well, I say interpretation simply to cover all bases and to give the board another option so to speak. The property that's the subject matter of the application was once residential, in fact had a house on it, it still has the foundation of the house on it.

MR. KANE: Where it says frame building?

MR. BLOOM: Correct, I'm told in 1997 the owner of the property at that time invited the New Windsor Fire Department to come in and burn the house down for a practice drill but the foundation is still there for that reason and out of an abundance of caution to give the board another option I asked for an interpretation.

MR. KANE: We'll add that to the public hearing.

MR. KRIEGER: You'll be prepared to proceed in the public hearing as if it was a use variance?

MR. BLOOM: That's correct, Mr. Krieger, I intend to proceed as if it's a use variance, that's correct.

MR. KANE: Now they intend to sell the land as if it's residential, they're not intending to build on it right away or leave that up to whoever purchases the property?

MR. BLOOM: At the present time, they just would like to sell it, obviously, anyone interested in purchasing would more than likely be interested in constructing a house, in fact, their only inquiries have been individuals who would make an offer subject to getting building permit to construct a house.

MR. KANE: Further questions from the board?

MR. BABCOCK: Mr. Chairman, Dan, have you seen the rezoning? Maybe you should mention that.

MR. BLOOM: I have not seen that.

MR. BABCOCK: I have a letter from Phil Crotty to the applicant that they requested from the Town Board rezoning of this property and the Town Board suggested that they not rezone it and that their alternative is to request a building permit and go in front of the zoning board so they don't, they have tried to get the rezoning done.

MR. KANE: Yeah, that would be pertinent in the public hearing.

MR. BLOOM: That goes back sometime, right, 2004?

MR. BABCOCK: 2004, yeah.

MR. KRIEGER: Mike, let me ask you is there any provision in the Town Law after which if they are successful in getting a variance within which they must apply for a building permit?

MR. BABCOCK: Yes, one year.

MR. KRIEGER: So that's something the applicant should be aware of one year period of time.

MR. BLOOM: Yes.

MR. KANE: Any further questions? I'll accept a motion.

MR. LUNDSTROM: Mr. Chairman, I will offer a motion that we schedule a public hearing for Mr. James Duffy for a requested use variance at 22 old Riley Road.

MS. GANN: I will second the motion.

ROLL CALL

August 28, 2006

9

MS. GANN	AYE
MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE
MR. KANE	AYE



ROBERT\_RICCARDI\_(06-51)

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Mr. Robert Riccardi appeared before the board for this proposal.

MR. KANE: Request for 2 ft. height for proposed fence in front yard at 4 Buttermilk Drive. Tell us what you want to do.

MR. RICCARDI: I'd like to put up a 6 foot fence in the back of the property, it's considered the front yard since I'm on a corner lot. It's about 200 feet of property which was basically wooded and I had no use of it, I widened it so that my children can play in the back.

MR. KANE: And the reason for the additional height is security?

MR. RICCARDI: Pretty much, yes.

MR. KANE: Privacy. There's a road outside, you're not going to be blocking any view of drivers?

MR. RICCARDI: Not at all, no, I have a stone wall which runs along Caesar's Lane which is about almost 4 foot high and that's going to stay, the fence would be behind that but it wouldn't carry along the whole portion of the road to the corner.

MR. KANE: Cutting down any trees, substantial vegetation?

MR. RICCARDI: None.

MR. KANE: Creating any water hazards or runoffs?

MR. RICCARDI: No, sir.

MR. KANE: Fairly straightforward. Any questions?

August 28, 2006

11

I'll accept a motion.

MS. LOCEY: I will offer a motion to schedule a public hearing on the application of Robert Riccardi for request for two foot height variance for proposed fence in a front yard at 4 Buttermilk Drive in a CL-1 zone.

MR. TORPEY: I will second that motion.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE
MR. KANE	AYE

DONNA\_BRUNELL\_(FOR\_MICHAEL\_MURPHY)\_(06-48)

PUBLIC\_HEARINGS

Ms. Donna Brunell appeared before the board for this proposal.

MR. KANE: Request for 24 ft. rear yard setback for existing deck at 112 Glendale Drive. Tell us what you want to do.

MS. BRUNELL: I'm actually representing my client, I'm with REMAX, Michael Murphy owns 112 Glendale, there's an existing deck on the house that's too close to the property line, in order to sell it he needs a C.O.

MR. KANE: Will you be here for the public hearing?

MS. BRUNELL: Yes, I will.

MR. KANE: We'll need a proxy. How long has the deck been up?

MS. BRUNELL: Over a year now, probably two years, within last two years, there was a deck there and he extended it, originally it was an 18 x 10 deck.

MR. KANE: Now you extended the original deck?

MS. BRUNELL: Yes.

MR. KANE: With the original deck was there a permit on the original deck, Mike?

MR. BABCOCK: We've got it as a 10 x 18 existing deck per the assessor's office, it was built with the house so that deck we're saying is exempt. This deck is 14 x 20 so it goes out farther, that's the issue.

MR. KANE: Cut down any trees, substantial vegetation in the building of the deck?

MS. BRUNELL: No.

MR. KANE: Create any water hazards or runoffs in the building of the deck?

MS. BRUNELL: No.

MR. KANE: To your knowledge, has there been any complaints formally or informally about the deck?

MS. BRUNELL: Not that I'm aware of.

MR. KANE: Deck similar in size and nature to other decks in the neighborhood?

MS. BRUNELL: Absolutely.

MR. LUNDSTROM: Any easements that that deck interferes with?

MS. BRUNELL: No.

MR. KANE: Any further questions from the board?

MR. LUNDSTROM: Just one question. When the enlarged deck was, original deck removed and new deck put on?

MS. BRUNELL: Yes, I believe the footings are the same footings, it's just the top portion.

MR. KANE: Even if you get the variance on this you'll still be subject to an inspection by the building department and their approval.

MS. BRUNELL: Okay.

MR. KANE: I'll accept a motion if there's no further questions.

August 28, 2006

14

MS. GANN: I will make a motion that we schedule a public hearing for Donna Brunell for Michael Murphy, schedule a public hearing for his request for 24 foot rear yard setback for existing deck at 112 Glendale Drive.

MR. LUNDSTROM: Second it.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE
MR. KANE	AYE

PUBLIC\_HEARINGS

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MICHAEL\_FARICELLIA\_(06-47)

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Mr. Michael Faricellia appeared before the board for this proposal.

MR. KANE: Request for 8 ft. rear yard setback for existing 8' x 4' shed and 7 ft. side yard setback and 8 ft. rear yard setback for existing 8' x 20' shed at 650 Blooming Grove Turnpike. At this point, I will ask if there's anybody here for this particular hearing? Okay, just going to ask you to write your name and address on it, they'll bring it out to you so we have it for the stenographer.

MR. KANE: Michael, same as the preliminary meeting, tell us what you want to do.

MR. FARICELLIA: I have two existing sheds on my property, they're in the back, back yard and trying to get a variance to make them legal.

MR. KANE: How long have the sheds been up, sir?

MR. FARICELLIA: One of them has been there probably 20 years and one of them has been there maybe 8 to 10 years, maybe five or six years.

MR. KANE: Cut down any substantial vegetation or trees in the building of the sheds?

MR. FARICELLIA: No, sir.

MR. KANE: Create any water hazards or runoffs?

MR. FARICELLIA: No.

MR. KANE: Any easements running through the areas where the sheds are?

MR. FARICELLIA: No, sir.

MR. KANE: Have you had any complaints about the sheds formally or informally over the years?

MR. FARICELLIA: No.

MR. KANE: That's the basic questions. At this point, we'll open it up to the public. Ma'am, speak up, state your name and address.

MS. BATTIPAGLIA: My name is Jacqueline Battipaglia, I live at 8 Parade Place. I live only 2 blocks from there. I got to know because this is nearly 200 square feet of storage space why we want that much storage space especially asking for a zoning variance.

MR. FARICELLIA: Well, I use it to store tools and things along those lines, I put my cars in the garage rather than store stuff in the garage.

MS. BATTIPAGLIA: I'd like to ask you, I don't know if this is appropriate but I'm curious just because of the number of critters in our area that tend to live underneath sheds including but not limited to skunks, raccoons and woodchucks as a person who lives in that area I'd like to see the number of sheds minimized especially when they're part of a variance and although these are where you store your tools now I have noticed your house is for sale and is this variance being asked as a convenience so you do not have to remove the shed or reposition them or these things that or just an extra 200 in storage space that the next owners are going to fully use?

MR. FARICELLIA: Well, I don't know what the next owner plans on doing with them, they're too large to move, they're sitting on gravel beds, so I don't have a problem with animals underneath them, they're built for

that reason.

MS. BATTIPAGLIA: I think it would be a neighboring thing to allow a shed especially requiring variance, it would be nice if we did not have them this close to either of the property lines. But since my good neighbor who we have never voiced opposition to the first shed or the second shed as new owners are taking possession of the house I would like to formally be considered for the removal of at least larger of the two sheds so as not to set a precedent for all the sheds that are sprouting up in our area.

MR. KANE: Nothing we do here sets a precedence, just so you know.

MS. BATTIPAGLIA: And I know I owe my neighbor a bit of an explanation and apology on this and again I have held out until the property was being sold. Since they are there now will not be a demonstrated need for whoever buys the property to have an extra 200 feet of storage space requiring a variance for both sheds.

MR. KANE: Thank you.

MS. BATTIPAGLIA: Thank you.

MR. KANE: Anybody else for this hearing? At this point, I'll close the public portion of the meeting and ask Myra how many mailings we had.

MS. MASON: On August 7, I mailed out 52 addressed envelopes and had no response.

MS. LOCEY: How long have the sheds been there?

MR. FARICELLIA: One's been there for almost 20 and the other between 5 and 6 years.

MR. KRIEGER: When you say they are attached, they are



attached to one another?

MR. FARICELLIA: Yes.

MR. KRIEGER: So it appears to be one shed.

MR. FARICELLIA: Right but one was there earlier than the other.

MR. KRIEGER: Just looks like an extension.

MR. FARICELLIA: Right, I didn't want to misconceive, it actually looks like two, he built them that way, it looks like two but they're right next to each other and the bases are together, they're attached, you couldn't move them.

MR. LUNDSTROM: Which was the one there for 20 years, the larger or smaller?

MR. FARICELLIA: The smaller one, there was one there when I bought the house, I tore that one down and built a smaller one and we put the larger one up, it's just longer because at the time I had a pool, I used to put the big pool handles and all the long stuff that wouldn't fit in my garage.

MR. LUNDSTROM: Would that hinder your ability to sell the property and the house?

MR. FARICELLIA: I won't have a variance, I won't be able to sell it.

MR. KANE: Is it reasonable to take one of the sheds down?

MR. FARICELLIA: My father built it, these things are built with 2 x 6's, it would be easier to take the house down.

MR. KANE: Okay, any further questions from the board?  
I'll accept a motion.

MR. TORPEY: I will make a motion that we grant the applicant, Michael Faricellia, his request for eight foot rear yard setback for existing 8 x 4 shed and seven foot side yard setback and eight foot rear yard setback for existing 8 x 20 shed.

MS. GANN: Second the motion.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE
MR. KANE	AYE

JOHN\_&\_TINA\_PETUTIS\_(06-44)

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Mr. John Petutis appeared before the board for this proposal.

MR. KANE: Request for 10 ft. rear yard setback for existing pool deck at 238 Summit Drive. Tell us what you want to do, just like the preliminary meeting.

MR. PETUTIS: I request a 10 foot variance change for my rear existing pool deck that backs up to a wooded area.

MR. KANE: Is there anybody in the audience for this hearing? Okay, thank you. How long has the deck been up, sir?

MR. PETUTIS: About four or five years.

MR. KANE: Cut down any trees, substantial vegetation in the building of the deck?

MR. PETUTIS: No.

MR. KANE: Create any water hazards or runoffs?

MR. PETUTIS: No.

MR. KANE: Have there been any complaints about the deck formally or informally?

MR. PETUTIS: No.

MR. KANE: Any easements going through the area where the deck is?

MR. PETUTIS: No.

MR. KANE: You understand that if your variance is granted you still have to pass inspection by the

building department?

MR. PETUTIS: Correct.

MR. KANE: At this point, I will open and close the public portion of the meeting, seeing as there's no one here, and ask Myra how many mailings we had.

MS. MASON: On August 7, I mail out 46 envelopes and had no response.

MR. KANE: Any further questions from the board? Is the deck itself by the pool, is that off the back of your house?

MR. PETUTIS: Yes, it's attached.

MR. BABCOCK: That's the reason why he's here, you actually can walk across the house deck onto the pool deck into the pool so it's considered part of the house, that's the reason for the setback.

MR. KANE: So now it becomes a safety issue too?

MR. BABCOCK: That's correct.

MR. PETUTIS: I had had the building inspector, Lou, I forget his last name, he had me make changes to the railing between the two decks and I had to make regular changes and he came back and checked them.

MR. KANE: Any further questions from the board? I'll accept a motion.

MS. GANN: I will offer a motion that we grant John and Tina Petutis their variance request for 10 foot rear yard setback for existing pool deck at 238 Summit Drive.

MS. LOCEY: I'll second that motion.

SISTERS\_OF\_THE\_PRESENTATION\_(06-43)

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MR. KANE: Request for interpretation and/or use variance to operate a day care center at 880 Jackson Avenue. Good evening, just need you to state your names as you speak so the young lady over there can hear you.

SISTER CLEARY: Sister Catherine Cleary.

MR. LEYEN: Henry Leyen.

MR. DECKER: Wayne Decker.

MR. KANE: Tell us what you want to do.

MR. DECKER: I'm with AHRC, we operate pre-school programs at the site, other organizations of other age groups of education sites, education programs at the site and a recent change in the New York State Education Law requires us to become licensed as a daycare for our pre-school program and that's just because our pre-school program happens to be a 5 hour day. The people we serve are handicapped and need that level of therapy and instruction each day. And the law says that if you provide pre-school for longer than 2 1/2 hours a day you also have to be licensed as a daycare. And so that's what brought this issue before you tonight. What we're doing at the site is not changing, none of the programs at the site are doing anything different than they have been doing for the past 20 years and for that matter I guess we're asking for an interpretation here to demonstrate that the site has actually been home to educational programs preceding the Town's zoning and so Sister Catherine can explain that for us.

SISTER CLEARY: And we'd like to keep the education on the present property so we would really hope that this would continue and that this would be granted.

MR. KANE: When did the pre-school programs start?

SISTER CLEARY: Started in the '70s.

MR. DECKER: Our programs started 20 years ago.

MR. KANE: When did the educational programs start?

MR. DECKER: You had educational programs.

SISTER CLEARY: We had them that started in the last 1920's, we had an elementary school and then we had a junior college that trained sisters and in a sense was a community college.

MR. KANE: And it has been used for various educational purposes since that period continuously?

SISTER CLEARY: Yes.

MR. KRIEGER: And you know this of your own knowledge?

SISTER CLEARY: Yes, history, too.

MR. KRIEGER: Your own knowledge supplemented by church records?

SISTER CLEARY: Yes and the school records.

MR. KANE: So there are school and church records to back up your statements?

SISTER CLEARY: Right, both schools didn't go out until the 1970's they switched over so they have been there.

MR. KANE: Have you had any complaints about the school in all these years?

SISTER CLEARY: No, we have only had positives in

regard to it.

MR. KANE: At this point, I will ask if there's anybody in the audience for this particular hearing? Seeing as there's not, we'll open and close the public portion of the meeting, ask Myra how many mailings we had.

MS. MASON: On August 7, I mailed out 31 addressed envelopes and had no response.

MR. BABCOCK: Mr. Chairman, can I add one thing? We have known about this school there since '85, we have inspected it since '85, the only thing that triggered this is the daycare license requires them to get a letter from me saying they're within the zoning in that district and that's what created this whole thing. So I have to write a letter to them for them to be there only because now they're considered a day school daycare because of the 5 hour thing, it's the only reason and I need something saying that they received the approval at tonight's meeting or whatever meeting therefore they can remain.

MR. KANE: Let me put it to the board, my own feeling is that we should address this as an interpretation, I don't see the need to go to the use variance but that's my feeling on it.

MS. GANN: I agree.

MR. TORPEY: This is only for Mike to give them a letter.

MR. KANE: Correct, it's not going to change, they're not changing anything that they have been doing over the years.

MR. BABCOCK: It's just who ran it, I think that's the difference in what's happening right now. In the 1920's the church ran it and the church is permitted to

be there and educational programs are permitted to be there and there's never been a question. The daycare is questionable, okay, because it's not the church that's actually running the daycare, it's somebody that they're renting to.

MR. KANE: Still though we've had the educational process there predating zoning, zoning being in like 1966?

MR. BABCOCK: That's correct.

MR. KRIEGER: If I may, let me ask you a question, you're renting this property?

MR. DECKER: Yes.

MR. KRIEGER: And it's owned by the church, it's been continuously owned by the church throughout, still owned by the church?

SISTER CLEARY: Yes.

MR. BABCOCK: Yes.

MR. LUNDSTROM: Just a question for counsel. Should we be looking at an interpretation or use variance?

MR. KRIEGER: Use interpretation and you should decide an interpretation before you decide and only if you decline the requested interpretation should you proceed to a use variance, take care of the interpretation first.

MS. LOCEY: What are we interpreting?

MR. KRIEGER: The use of the property pre-exists the enactment of zoning and is permitted to continue.

MR. LUNDSTROM: If I could put those words into the



August 28, 2006

27

form of a motion, I will do so.

MS. GANN: I will second that motion.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE
MR. KANE	AYE

BOHLER\_ENGINEERING\_(FOR\_CUMBERLAND\_FARMS)\_(06-46)

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Mr. Robert J. Spiak from Bohler Engineering appeared before the board for this proposal.

MR. KANE: Request for 96 sq. ft. sign area and 3 ft. height for proposed free-standing sign at 401 Blooming Grove Turnpike. At this point, I will ask if anybody's here for this hearing? We'll get a sheet back there for your name and address, please. Go ahead, sir.

MR. SPIAK: Rob Spiak with Bohler Engineering, we're here tonight to ask for a variance for a new freestanding sign for this development that has previously been approved at the planning board and we also received a previous variances from this board here. At the time we got the variances from this board previously it was our intention to leave the existing freestanding sign in its place. Since then due to the planning process and the need to make things look better at the end of the site we have decided to abandon the existing sign as part of the development program and propose a new freestanding sign, the freestanding sign is consistent with the area of the existing freestanding sign, building signage, canopy signage has been reduced on the property. The freestanding sign that we're now proposing is sort of a rectangular style with a colonial roof to match the building facade upgrade and also has a brick planter around the bottom of it located towards the intersection of Blooming Grove and Caesar's Lane there we've got it positioned far enough away from the intersection. In our opinion, there's no detriment to the traffic sight lines or any safety issues.

MR. LUNDSTROM: Question, Mr. Chairman, is that sign going to be exactly as it is here advertising gas for \$1.98 a gallon?

MR. SPIAK: No, sorry.

MR. LUNDSTROM: The square footage of the sign?

MR. SPIAK: The square footage of the sign we're 48 square feet per panel, 96 per side, I'm sorry, 96 square feet total 48 per side so they're basically they're 4 x 6 panels.

MR. LUNDSTROM: Total sign is the sign top to bottom?

MR. SPIAK: Eight feet by six feet.

MR. LUNDSTROM: Six wide, eight high?

MR. SPIAK: Correct.

MR. TORPEY: We're going to make sure the bottom is open?

MR. SPIAK: Correct.

MR. KANE: Why the extra 3 feet in height?

MR. SPIAK: That's actually the little canopy on top to give it a little decoration to it, if you look at the top of the physical sign it's compliant but the three foot roof puts us in the need for a variance.

MR. KANE: The sight lines below the sign on that corner are fine, we'll be able to see?

MR. SPIAK: Yes.

MR. KANE: At this point, I will open it up to the public, I will ask you to state your name and address and speak loudly enough for this young lady over here to hear you.

MR. WRIGHT: My name is James Wright, I live at 3 St. Anne Drive, Town of New Windsor and I have been reading

a lot of the minutes of previous meetings, I realize that the issue tonight is a sign but in order to consider the sign, I think you have to consider a little bit of the other things that have taken place with this particular proposal. They are proposing to fully demolish the site, replace a 1,600 square foot store with a 3,600 square foot store which is 127 percent bigger than the original store. They are also going to add 6 gas pumps to the existing 4 and they are going to have ten gas pumps. Now those of us who live nearby look at that, look at that site, look at the size of that land and can't really figure how they're going to get a store twice as large there and as many as 12 pumps there, we honestly can't. This as you know is a neighborhood commercial zone, this is probably the heart of New Windsor as far as residential structures is concerned. I live in the Schoonmaker development, I believe you do, Mr. Kane, it's known as Willow Acres and many of my neighbors never realized the name of it but you have Willow Acres about 250 homes, you've got next door you've got another development Murray Rotwein built, you've got Oakwood Terrace with about 100 condos, you've got Sycamore Gardens which sits almost directly adjacent to this, you have Garden Apartments directly behind this and they very clearly say they're going to use the tree line as, you know, protection of the apartments. The tree line, the trees belong to the Garden Apartments, they haven't put anything in there at all. You also have the Butterhill.

MR. KANE: Just so you know, there is a fence going back there.

MR. WRIGHT: It's about the cheapest fence that you can put up, it's nothing more than a picket fence but they're using somebody else's greenery to make the buffer but the thing it's not their own at all, you know. So we do have a lot of residential areas there, we've had a higher than normal accident rate over there in that particular area, Caesar's Lane and St. Anne are

not directly in line, there's a lot of accidents and a lot of problems over there in that particular area. This is going to add substantially to the problems. So I figure there's about 1,500 units of private homes in that area. An item which bothers me and I see the building inspector here and I realize they have already given approval to this project but Mike I read that a store has to have a minimum of 150 square feet of, a parking spot for each 150 square feet, 3,600 square feet requires 24 parking spaces.

MR. KANE: The issue here is signs.

MR. WRIGHT: I understand that but--

MR. KANE: That's all we're going to address this evening is the signs, that's what's at issue.

MR. WRIGHT: Just the sign but the sign is going to sit on the property, you show me where the sign's going to sit in relation to the 24 parking spaces, in relation to the 12 pumps, in relation to the 3,600 square feet building, that's why all of these things are important because the sign is going to be someplace in that, I defy them to put the sign anyplace where it's not going to be in the parking spots if they're requiring 24 parking spots where the 12 pumps are or where the building is. I would ask you before you make a decision on the sign that each of you look at the site plan and see where the proposed location of the sign and see what it will do and what affect it will have on the rest of the site. I want you to consider the increased traffic to the store and the gas pumps. I want to you look at cuts to see where the cars are going to be coming in off the side roads and where they are going to affect the sign itself. And finally, I just want to recite to you and I'm sure you have all read the zoning book as I read it in the last day or so, the purpose of zoning, and I quote from the New Windsor Code, is to provide for the gradual elimination

of non-conforming uses not to keep allowing them to continue to protect and enhance the community appearance and that place right now is a mess, hopefully they're going to do something better over there. Considering all these factors and the codes of which they have been given a variance on everything from the building to the pumps to the signs to the whole works considering all these factors I urge you to turn down this request for a larger sign. Thank you.

MR. KANE: Thank you, Mr. Wright.

MR. KIMBELL: Jim Kimbell, 257 Guernsey Drive, New Windsor. I guess I'm opposed to a larger sign, I don't think it's a fit for the neighborhood and I think I haven't heard any reason to really grant a request to increase the size of the sign or to just other than they want one, so I don't feel it fits in the community or neighborhood and I'd like to see it turned down.

MR. KANE: Thank you. Anyone else?

MR. LITTIER: Steve Littier, 7 St. Anne Drive, I'm also opposed to the sign for the reasons the gentleman just gave.

MR. KANE: Thank you. Anyone else?

MS. BATTIPAGLIA: Jacqueline Battipaglia, I live at 8 Parade Place. For the same reasons the other gentlemen have given I also oppose the increase in the sign.

MR. HOVEY: Richard Hovey, 16 St. Anne Drive. I too for the same reasons.

MR. TERWILLIGER: Richard Terwilliger, 18 St. Anne Drive. I too oppose it for the same reasons already given.

MR. KANE: Anybody else? At this point, we'll close

the public portion of the meeting, bring it back to the board. I will ask Myra how many mailings we had.

MS. MASON: On August 7, I mailed out 58 envelopes and had no response.

MR. SPIAK: Can I clarify one point for the record please?

MR. KANE: Yes.

MR. SPIAK: Reiterate the size of the proposed sign is exactly the same as the existing sign. Over the years the code has changed requiring a variance but we're not asking for a larger sign than what stands on that property today.

MR. KANE: Any further questions from the board?

MR. LUNDSTROM: Just one question, if the new sign is not going to be any larger than the old sign, why a variance? Just for the record.

MR. BABCOCK: They're relocating it and it's not in conformity with the today's zoning.

MS. LOCEY: So it conformed previously and now zoning changed?

MR. BABCOCK: I didn't even look because they're moving it, it's just as if and they're putting up a new sign so it's in a different location and it doesn't conform to today's, they need a building permit today, they've got to conform.

MR. TORPEY: They're moving it from the center to the end.

MR. BABCOCK: Well they're actually putting a new sign in.

MR. SPIAK: Initially we were going to relocate the existing sign to the corner and Mike informed us that that would still require a variance for the same thing we're asking for today, just to relocate the existing sign because it's a new application.

MR. BABCOCK: Right.

MR. SPIAK: So we decided to do a nicer sign.

MR. LUNDSTROM: If I may just one piece of rhetoric. I empathize with the frustration of the general public regarding this, however, one of the things that we're required to do although many of us would love to solve many more problems we're required by law only to consider what's being brought before us, what's being brought before us right now is to allow this project to take an existing sign, move it to a new location, erect a new sign of the same size, I believe that's the consideration at hand?

MR. KANE: Yes, it is.

MR. LUNDSTROM: But by comments I've heard before about the project itself I think those comments best be heard by the planning board, if that time has already come and gone, I would wonder why they weren't made to the planning board but the only thing we can do by law is consider the matter that's at hand before us.

MR. KANE: Okay, any other comments, questions? I'll accept a motion.

MR. LUNDSTROM: In preparation for making that motion I would like to say that this board has got photographs in front of it of the existing building with the existing sign, we have a rendition of the newer sign and it appears at this time that the new sign will look a lot better than the old sign and will add to some of



the improvements in the area. Now I'm being cautious I'm saying it appears that way, again the area of the sign is not going to increase, just going to be moved.

MS. GANN: I will make a motion that we grant the variance for Bohler Engineering for Cumberland Farm request for 96 square foot sign area and three foot height for proposed freestanding sign at 401 Blooming Grove Turnpike, Cumberland Farms.

MR. LUNDSTROM: I will second that motion.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE
MR. KANE	AYE

DIANE\_BUCKNER\_(06-42)

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Ms. Diane Buckner appeared before the board for this proposal.

MR. KANE: Request for 16 ft. 6 in. front yard setback and 27 ft. 6 inch front yard setback and 5 ft. rear yard setback for addition to single family home and interpretation and/or variance for single family home with two kitchens at 16 Cannon Drive on a corner lot. Tell us what you want to do, same as the preliminary.

MS. BUCKNER: I plan on building an addition for my mother to live in. She'll have access into my home through her addition and I will never be renting this out to anyone in the future should my mother pass.

MR. KANE: Will this all be on one main meter coming into the house for gas and electric?

MR. BUCKNER: Yes.

MR. KANE: And there will be as you said there's an internal entrance from the addition to your home?

MR. BUCKNER: Yes.

MR. KANE: And you have no intent at all of using this as a two-family home or renting, sub-rent this out as an apartment, that's not your intent?

MR. BUCKNER: No.

MR. KANE: With building the addition, cutting down any trees or substantial vegetation?

MR. BUCKNER: No.

MR. KANE: Creating any water hazards or runoffs?

MR. BUCKNER: No.

MR. KANE: Is there any easements running through your property?

MR. BUCKNER: No.

MR. KANE: At this point, I will ask if there's anybody in the audience for this particular hearing?

MS. BATTIPAGLIA: Jacqueline Battipaglia. My address is 8 Parade Place. Basically, I just have a couple more questions and you answered most of them already, will you be adding an additional driveway to your home to accommodate your mother's quarters?

MR. BUCKNER: No.

MS. BATTIPAGLIA: In the event your mother ceases to live with you, what are your plans for her unit which includes her private kitchen when your mother no longer lives with you?

MR. BUCKNER: I have three children, more than likely I will turn her area back into one room, make a bedroom, it will have a bathroom also.

MS. BATTIPAGLIA: Just because I couldn't hear all of it you said that to get into your mother's quarters it is accessible from the inside of your house?

MR. BUCKNER: Yes.

MS. BATTIPAGLIA: And I also would like to give you an explanation for why I'm asking. Two doors from me the same thing happened and then mother no longer lived there and the people now the present owner rents it out to unrelated people and it's a problem because they drive up the renters drive up over the curb across the lawn to get to the quarters that were built in the back

of the house and it doesn't make it very attractive for some of us when we want to sell our house because the variance was given for very valid reasons, it's just that afterwards it creates a little bit of a problem for the rest of it which is why I had a major concern for what you wanted to do.

MR. BUCKNER: No, I understand but you can't rent it out, it's not zoned two family. Is that correct?

MR. KANE: Yeah, but this is the real world and people do that stuff. Honestly, that's why you're here, that's why we have the building department bring it in, that's why we get your testimony on record that your intent is to use it and if anything happens later on that will obviously be used against you.

MR. BUCKNER: I could never live with anyone that close to me other than my mother, I thought that through. Also cause she's not going to be here forever and it's small enough that I can make the bathroom nice enough for myself and my husband that we'll just use that, just going to make that a master bedroom.

MS. BATTIPAGLIA: What's the approximate square feet area that you're adding on to your home?

MR. BUCKNER: It's 22 by 42.

MS. BATTIPAGLIA: I'm sorry, 22 by 42.

MR. BUCKNER: The front of that is going to be a living family room for myself.

MS. BATTIPAGLIA: I see. And I have just one final question. When all of you decide that you're not going to live there anymore and the house is put on the market, what can those of us who live around the corner expect for how this house is going to be offered and sold by keeping in mind that I'm already dealing with

two doors away a house that is supposed to be one family residential. Yes, we have multiple non-related people living there and in addition to that when a house sold on Regimental I actually called the realtor and asked for a description of the house and they had told me at that time that could be sold as a two-family house. So I know I have already dealt with this historically and this is why I'd like to know what happens when this family which obviously has every good intention when they sell their home for how it's going to be allowed to be marketed.

MR. BUCKNER: Isn't that mother-daughter?

MR. KANE: You can market it mother-daughter.

MR. BUCKNER: But not two family.

MR. KANE: And single family.

MS. BATTIPAGLIA: What's the recourse for anybody and this is--

MR. KANE: Ma'am, there's no recourse, if you feel that somebody has an illegal apartment in the home you turn it over to the building department, very simple.

MR. BABCOCK: File a complaint.

MS. BATTIPAGLIA: Under the circumstances, I wish your family and your mom the best and happiest time in your lovely neighborhood. I have no objections.

MR. KANE: Any other questions, comments? We'll close the public portion of the hearing and bring it back to the table. Myra, how many mailings did we have?

MS. MASON: On August 7, I mailed out 73 envelopes and had no response.

MR. KANE: Any further questions from the board?

MR. LUNDSTROM: Just a comment pertaining to this woman that asked a question from the audience, I'd ask the attorney to correct me if there's any inconsistencies in what I'm saying. If this variance is granted, if this process is granted, the house will continue to remain a single family house. At the time when the house is sold if I want to buy the house, the bank that would be financing it would write a letter to the town asking for a copy of the C.O. and the town would then inform the bank this is only a single-family home. If I'm looking to buy it as a two-family house, I would then be told by my bank that it is a one-family house.

MR. KANE: The banks are very, very tough.

MR. LUNDSTROM: That's where part of the enforcement comes in.

MR. KRIEGER: I will say if I may, Mr. Chairman, not only is the member correct but in addition banks are a lot more stringent now than they were even just a few years ago. They look very carefully at this business about occupancy and whether it's one or two or three family and what's allowed. They didn't used to be so scrupulous but they are very scrupulous now.

MR. TORPEY: They want letters from the building inspectors.

MR. KRIEGER: They pour over them and if they can find a reason for objecting they do not hesitate to do so.

MR. KANE: Just to give you an example, a number of years ago we refinanced I was told there is an illegal building on my property. I asked them to come out and show it to me and it was a dog house that I didn't have a permit for. And that's not a lie, okay, that's how tough banks are, it's the banks that will follow up on

that stuff and needless to say the dog house went into the shed because I wasn't giving him another 75 bucks. Any further questions? I will accept a motion.

MS. LOCEY: I will offer a motion.

MR. KANE: We need two motions, I need a motion to grant the requested setbacks and you can say it that way and a motion for an interpretation on the second kitchen.

MS. LOCEY: I will offer a motion that the interpretation for this application be determined as a single family home with two kitchens.

MR. TORPEY: I'll second that.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE
MR. KANE	AYE

MS. LOCEY: I will also offer a motion to grant the requested variances on the application of Diane Buckner at 16 Cannon Drive on a corner lot for an addition to the single family home.

MS. GANN: Second the motion.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE
MR. KANE	AYE

August 28, 2006

42

MR. LUNDSTROM: Ma'am, if you're aware of any violations, please, it's your duty to report them to the town, to file a complaint so that the town can follow up on that and we would encourage you to take that and we'd encourage all of our residents to do the same. Thank you.



LUIS\_CASTILLO\_(06-41)

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Mr. Luis Castillo appeared before the board for this proposal.

MR. KANE: Request for 12 ft. rear yard setback for proposed wood deck at 280 Garden Street. Tell us, just speak loud enough for this young lady to hear you.

MR. CASTILLO: I'm requesting a 12 foot rear yard setback, I currently have a 10 x 10 wood deck that I wish to replace with a 16 x 22 feet and because of the shape of my property there seems to be a problem with I think the new dimensions of the new deck and we're replacing the 10 x 10.

MR. KANE: Michael, where the line that shows the 31'2" we're considering that rear yard?

MR. BABCOCK: Side yard, Mr. Chairman. The other angle back where we have 38 feet that's what we consider the rear yard unless you'd like to us change that.

MR. KANE: No, since it's a strange looking lot, just wanted to clarify. How big is the deck you're now proposing to build?

MR. CASTILLO: Sixteen by twenty-two.

MR. KANE: Is that similar in size and nature to other decks that are in your neighborhood?

MR. CASTILLO: As far as I know, yes.

MR. KANE: Cutting down any trees, substantial vegetation in the building of the deck?

MR. CASTILLO: No.

MR. KANE: Creating water hazards or runoffs?

MR. CASTILLO: No.

MR. KANE: Any easements running through the area where you'd like to put the deck?

MR. CASTILLO: Not that I know of.

MR. KANE: Let the record show that there you have sliding doors coming off the back of your house?

MR. CASTILLO: Yes.

MR. KANE: Therefore having a safe deck there is a safety consideration?

MR. CASTILLO: Yes.

MR. KANE: At this point, I will open it up to the public and ask if anybody's here for this particular hearing?

MR. MACKEY: Ron Mackey, we live at 286 Garden Street next door to the Castillos, yeah, we live next door. We have no problem with his proposal.

MR. KANE: Anybody else? We'll close the public portion, bring it back to Myra, ask how many mailings we had.

MS. MASON: On August 7, I mailed out 34 addressed envelopes, had no response.

MR. KANE: And we'll take it to the board. Any further questions? I'll accept a motion.

MR. TORPEY: I will make a motion that we grant Luis Castillo's variance as requested for his deck.

MR. LUNDSTROM: I will second that motion.

August 28, 2006

45

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE
MR. KANE	AYE

DEBORAH\_MENKENS\_(06-45)

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Ms. Deborah Menkens appeared before the board for this proposal.

MR. KANE: Request for variance to allow additional horses maintained 35 ft. from property line at 1 Sean Court. Tell us what you want to do.

MS. MENKENS: I'm requesting an additional four horses to be housed on my property along with a 35 foot fence line long the property line, off the property line.

MR. KANE: How many horses do you currently have on the property?

MS. MENKENS: Six.

MR. KANE: Mike, what's the allowable amount?

MR. BABCOCK: Two.

MR. KANE: So you're here to allow the additional horses that are already existing?

MS. MENKENS: Yes.

MR. BABCOCK: And also maintain them 35 feet from the property line instead of 75 feet that's required.

MR. LUNDSTROM: Once again for the record if you would just why are you requesting this from two to four horses?

MS. MENKENS: There's six members of my family and each of us owns a horse, each of us rides a horse, it's purely recreational for our family.

MR. KANE: How long have you had the horses?

MS. MENKENS: Four weeks.

MR. LUNDSTROM: They're physically there now?

MS. MENKENS: Yes.

MS. GANN: The portable barn, is that the pictures that are in this book right here?

MS. MENKENS: Yes.

MS. GANN: And it's portable cause it's movable?

MS. MENKENS: Yeah, they have brackets on it where you can pull it back onto a tractor.

MR. LUNDSTROM: Portable barn there is to store the six horses?

MS. MENKENS: Yes, hay and a tack room.

MR. LUNDSTROM: Just a question for the building inspector, is there, is it currently a violation to have six horses on that property?

MR. BABCOCK: Yes, it is.

MR. LUNDSTROM: If I may back to the applicant, did you know it would be a violation to put six horses on there and if so why did you do it?

MS. MENKENS: No, I didn't know it was a violation.

MR. LUNDSTROM: Even though you came before the board before in the preliminary asking permission to increase it to four and we had not yet issued our decision you went ahead and brought the other horses to the property?

MS. MENKENS: Yes.

MR. KANE: Okay, I think at this point I'm going to open it up to the public, please state your name and address and if you have any comments, questions.

MS. KEAN: My name is April Kean and I'm going to be speaking for my family, Peter and Joan Kean who reside at 1 Brittany Terrace, Rock Tavern, New York. And Mr. Chairman, before we begin, I have a few handouts so everybody is aware of what we're talking about. My family's property backs their property on the north side and first I'd like you to take a look, if you take off your clip there's a picture book that will kind of give a pretty good summation of what's transpired now.

MR. KEAN: If you look at this diagram here, the black line around the outside of the square is the borderline of the Menkens' property. The green line, the green square, the green line is what's required by the setback regulations of 75 feet. The red line is what they have already built.

MS. KEAN: Which you can see in the pictures in the photograph.

MR. KEAN: The red line is the fence all the way around the property, no part of that fence is 35 feet away from their property line so in fact, they should be asking for a variance larger than 35 feet.

MS. KEAN: To continue on what my father was saying, if you take a look at, we had a certified land surveyor, Mr. Bill Hildreth, come out and survey our property lines and there is a letter that's attached and Mr. Chairman has a copy of the surveyor's map and it clearly states that the fence that she has installed on one area is 35 feet, the middle is 31 feet and the far side is 32 feet, excuse me, 25 feet across, away from our property line, so as is the entire perimeter of the already installed horse fencing. Now, one of our

concerns when they first started their project I went down to the building department and through public access took a look at the file and noticed that they had a nice letter in there which stated she wants to run a business, a therapeutic stable and knowing that it is an R-1 zone was quite curious so investigated a little bit more, then proceeded to notice that all of her building applications had been turned down and low and behold, the buildings kept proceeding. So if you want to just go ahead and take a look at the picture book starts with different views of the Menkens' different properties, of their property.

MR. KEAN: Each one is labeled and what we did is to kind of go around the property first picture on the cover is the picture of Menkens' property from Toleman Road, the second picture is going down Sean Road which is a private road, Sean Court, excuse me, showing a shed and some kind of a truck and couple of bikes and a stable in the background, you can only see the roof of the stable in this picture. The next picture is a little further down, it shows another part of the shed and some wood stored and something evidently has blown over, I don't know what it is with a metal frame around it. Next picture shows their back yard and their swimming pool and their deck. Another picture number 5 is pretty much the same thing, I guess that's a hot tub with a plastic top over it. Then we show a picture of six horses, you'll notice that there's absolutely no vegetation on the ground for the horses to eat. Next picture number 7 shows a couple of horses in manure and puddles, the ground out there has very, very low perc, there's a tremendous amount of clay in it and everything that the horses do is ultimately going to run off onto our property. The average horse produces 50 pounds of manure a day, that's 9 tons a year so 9 times 6 is 54, 54,000 pounds of horse manure going to run down through a little stream into our pond at Brittany Terrace and while I'm not concerned about germs I am very, very much concerned about the

nutrients from the horse manure and what it's going to do to our pond, our little lake because it's going to just destroy it insofar as plant growth is concerned.

MS. KEAN: So if you continue on, you'll notice on different markings if you take a look at picture 10 in the album right there you'll see a surveyor's tape from another surveyor that had come out and you'll see the fence line is 25 feet from the surveyor's tape. Same thing depicted on picture number 11 on the opposite side, yet another property. Now on picture 12, there's a person standing in the picture and you'll see I drew a red line across the top. Now if you notice all of the clearing the whole entire area that the horse is now living in was totally cleared and not only did they clear their land but they also cleared a portion of our land and our land falls down into a gully which used to be an old railroad bed, thus they pushed all of their debris or a portion of their debris over our hill and onto our properties. Then if you continue on to page 13 there used to be a property fence which was pretty much obliterated. Page 14 gives you a better picture of the destroyed property line fence. And page 15 if you will notice right in the picture the X, the red X that's the property line and it's quite clear of where their clearing went to. Now, page 16 will show you approximately three to four feet deep 16 inch drainage pipe that they installed, had put in through the length of their properties which extended over in this one 9 feet onto our property draining all of the water, sludge, puddles, everything, wetlands that used to exist there onto our property. Now, after we have discovered this which was on the 27th after walking and taking pictures, we came back two days later, excuse me, I have the date wrong on here, to notice the whole thing is covered up, not necessarily capped or rectified but machines came in and covered the whole pipe.

MR. KEAN: This picture number 17 is taken, the top



edge here is probably about 15 feet higher than where the picture was taken from so we're looking up a bank and what they did was go over to our bank, dig back and put a pipe in and as April correctly points out the first picture was taken on the 25th, is that right?

MS. KEAN: I'm sorry, I wrote the dates wrong.

MR. KEAN: And then two days later the trench is filled in so--

MS. KEAN: On page 18 on the opposite end of the fence on our property line they put yet another drainage system in also extending the far part is our currently existing drainage ditch which is at the bottom of the bed, they dug down and installed their drainage to extend into ours but of course leaving a big gap so we would get all the affluent and everything from the horses.

MR. KEAN: If you look very closely you'll see a black pipe, that's our black pipe and everything else on this side was installed by Menkens. Also just trying to be a friendly neighbor if you go back to page 9 please and you'll see on page 9, their household domestic water well is right smack in the middle of where all their horses do their business and that's rather bizarre. I don't know whether that's a health department matter or not but I certainly think if I lived there I would be very, very concerned about the quality of the water. I think what my, aside from the fact that this is going to severely impact Mrs. Menkens, we'd like that back, that's not for you, is the fact that we have been in Town since 1964 and some folks know me, some people don't, but we usually try to follow whatever the rules are to the best of our ability and I'm absolutely bedazzled that somebody can come in, clear out property, put up fences put and install a stable, move in six horses and then come and ask for permission to do it after being turned down by the planning board.

MS. KEAN: If I can just tack on to what my father had said when I was at the building department I did clearly look at the plans and she submitted the request for her portable stable and as you can see as depicted in the picture it is not a portable stable. It is a full blown eight stall wooden structure with a tack room in the middle so and if your plan or the legalities are to have two horses you have six, you certainly don't put up a stable for eight horses.

MR. KEAN: There's a right-of-way from AT&T that runs through our property and runs right through the Menkens' property, right-of-way requires no permanent structures be built on it, I know it's not the zoning board's concern but it just it's indicative of how I fail to understand how certain people can operate the way they operate.

MS. KEAN: Thank you for your time and we'll give the floor to somebody else.

MR. KANE: Anybody else? Next?

MR. SPINDLER: Tim Spindler, I live at 2 Sean Court. I'm speaking for my wife and my rest of my family, my son and my daughter. We have concerns not so much of what the Keans had, the horses have been there about a month, we have seen an increase in horse flies. I have expressed my concern to Larry the other day, you know, I, we were getting chased off by horse flies in our back yard a few days ago.

MR. LUNDSTROM: You said you mentioned it to Larry, for the benefit of the board, who's Larry?

MR. SPINDLER: Larry is Debbie's husband. We don't get as much smell from the horses but we don't, we live south and we don't get the wind as much, we do get a little bit of smell early evening sometimes in the

morning but I think my concern is more it's so early it's only been four weeks and we're already getting horse flies and we haven't even had it through the major part or the summer. I grew up around dairy farms and with a grazing animal a rule of thumb is one acre per animal, there will never be any vegetation there, I'm concerned about standing water with mosquitoes, we plan on putting a pool in next year, I don't want to be chasing horse flies and swatting mosquitoes instead of chasing my kids around. I didn't know it but I'm concerned if there's going to be a school of some, riding school going there, there's an increase, we have a private road and from this building that's been going on it's almost like an attraction now, we have an increase already on our private roads from people just seeing what's going on. I don't understand how they could have a school on a private road that's only one fourth of their road, it's owned by three other people also. I'm also concerned, we have two small children so my wife and I are awake early in the morning to the Menkens' benefit they are out there early with the horses, but my concern is what happens when the novelty wears off and Debbie goes back to school, she goes back to school in September, who takes care of all this then and it starts to get dark at 5 o'clock and she gets home at three or four, that doesn't leave very much time to clean up anything. And finally we're, the building's already done but we're concerned about the value of our property, I can't imagine that that's increased our property value. That's pretty much all I have.

MR. KANE: Thank you. Anybody else?

MR. SMITH: My name is Brett Smith, I live at 4 Sean Court on the same road that Debbie and Larry Menkens live. I have a lot of the same concerns Tim does, Tim Spindler who just spoke in front of you all. One of my other concerns is smell, any time the wind blows out of the west or the northwest I smell horses. Not too long

ago sitting on my back deck with my wife and having dinner and I smell horses. Now I know they're probably doing their best to try to control the smell of horses but any time you have six animals in such a small parcel of land I don't know how you're going to be able to control horses' manure, the smell of the horse, the flies and things like that. So I'm really concerned about the value of my house, if I do decide to sell my house, who is going to want to buy a house when they smell horses when they pull up to it. Also just as far as I have a very big family, we love having barbecues outside and it's embarrassing when we have the family come over and you have to smell horses in your own yard. So those are my concerns.

MR. KANE: Next?

MR. DECKER: Jack Decker, 462 Tolman Road. I have the same concerns, I have a view out of my back, I have a pool, I had company over one day, all I do is smell the horse manure. I have a deck on the back, can't sit on it and smell horse manure, can't open windows in the house, smell horse manure, I'm thinking about selling my house, I'm not sure what that's going to do to the value looking out onto that farm. My concerns are just like everybody elses.

MR. KANE: Thank you, sir.

MR. STEELE: My name is David Steele, my concern is the smell of the horses. I live directly behind him, their house and the pasture comes near my house, I open my bedroom window and I smell nothing but horses. She even asked me if I smelled the horses, I told her yes, I smelled the horses, I smell horses all the time because I'm closer than anyone else in the rear of them and that's my biggest concern. I don't like that at all because I bought that home there, spent a lot of money for it and I don't want the value of it to go down because of eight horses or six horses. That's my

complaint, the smell of the horses. They put up some trees but trees cannot contain the smell of those horses, they smell all the time, even when the wind is not blowing you can smell those horses.

MR. KANE: Thank you, sir. Next?

MR. MC ELDUFF: My name is Tim McElduff from the law firm of Drake Loeb and I represent the Keans and I just want to emphasize some of the information the Keans have already provided to you today. As a member of the board already was quick to point out there is already a violation, the variance request here starts with a request to reduce the space needed by over 50% from 75 feet to 35 feet, the 75 feet is a requirement for two horses, there's two there, that's three times what the 75 foot requirement would require for compliance and they are now seeking to reduce the space between the Kean's property and there's with the fence to 35 feet which they have already done and put the, but the horses are already there so when you consider the factors I would say that this situation is self-created. There's a jurisdictional point I'd like to bring up. The application for the variance here in questions makes a reference to an area variance which I have just spoke about and the SEQRA form entitles the project a 35 foot fence line and requesting a horse fence 35 feet from property line. There is no mention in either of these documents and then the last page of the environmental assessment states changing 75 foot fence line to 35 foot fence line from their property line, there's no request to add additional horses to this property. I would point out to the board or I'd submit that that is not even properly before you and just to point out some of the information that you're provided by the Keans, Mr. William Hildreth pointed out that although the request is for 35 feet if you look in the last paragraph of his letter the fence is already there and it's already either 23 feet to 32 feet from the Kean's property line and they're requesting

something that's impossible, they have already put it there so 35 feet is irrational. And the diagram that was provided by the Keans points out that it is not just for the Keans, there's no point on this property where the fence that's already been constructed is at least 35 feet from anyone's property line, it's closer on all sides and the purpose of providing Mr. Hildreth's letter and map was so that you didn't have to rely on just the Kean's words, they actually commissioned somebody and paid them to do that. And as the Keans pointed out there's an issue of whether or not the real intent is for a commercial operation and in the information packets that you guys have there's an initial letter Chairman Kane reciting they'd like to open and operate a therapeutic riding stable, the term open and operate is used twice in the letter, citing that the Town lacks such a riding stable. And then finally as you've heard from the neighbors there's a severe detriment to the health and welfare of the community, the change is obviously undesirable but I'd like to point out that there's enough property here what the Menkens are seeking to do they can comply with the law here, they have enough property they can have two horses and a fence 75 feet from everyone's property line, they just choose not to do that. They don't need a variance to comply with the existing codes and you've heard about already the adverse impact physically and environmentally that the neighbors would suffer and finally that the problem that requires a variance was self-created by the applicant. And there was also there's an issue of how many members of the family. It was our understanding that there were four members, the testimony from the applicant was six, I don't have any evidence to refute that but that's something that should probably be looked into by the board when considering this application. Thank you.

MR. KANE: Thank you. Anyone else?

MR. KEAN: I just wanted to assure Mrs. Menkens that I

didn't walk all over your property, I have an instrument that allows measurements from a distance so that's how I got the side lines. I probably did walk on the Menkens' property a little bit along our fence line because most of the fence isn't there and I didn't know where the property line was so--

MR. KANE: Okay, anybody else? We'll close the public portion of the meeting and bring it back to the board, ask Myra how many mailings we had.

MS. MASON: On August 7, I mailed out 22 addressed envelopes and had no response.

MR. KANE: Miss Menkens, would you care to address the issues?

MS. MENKENS: All right, back property along the railroad bed they claim that the fence that's existing there is their property line when in fact is 10 feet beyond that, I own the cow fence plus 10 feet to that which brings you to the edge of the railroad bed which has an incline on it. When I measured it, it was 45 feet.

MR. KANE: You did the measuring, ma'am?

MS. MENKENS: Yes, quite a few times. Mr. Steele just had a survey of his property and I believe the corner of his property back property and my fence line is about 40 feet. The only violation I see here as far as the fence goes is Mr. Decker's where I'm 25 feet off the property line, Mr. Decker also has his leach field on my property.

MR. KANE: Ma'am, this isn't tit for tat.

MS. MENKENS: I understand that.

MR. KANE: Just need to address what's going on.

Honestly, I just don't--put a lot of money at risk.

MS. MENKENS: Well, actually, the existing fence line that I have could be my exterior fence line that I was going to put up on my property line and then I could put 75 foot inside that so I still would have my double fence for protection. Follow?

MR. KANE: I follow. Can you explain why you went from a portable building to a huge wooden building without a permit?

MS. MENKENS: It's a shed without a floor and as far as when I met with Dave from Verizon Structures it's still considered portable.

MR. KANE: This wooden structure is considered portable?

MS. MENKENS: It's got wooden blocks on the bottom, the bottoms are open, they're not closed, there's no floors and there's bars in there where you just connect it to a flatbed and you pull it up and it's removable.

MR. KANE: What about the connecting roof across the top?

MS. MENKENS: That has to be dismantled. I have here the plans for the shed.

MR. KANE: I don't need to see those.

MS. MENKENS: Which exceed New Windsor's building codes.

MR. LUNDSTROM: You said it exceeds New Windsor building codes?

MS. MENKENS: Yes, wind and snow.



foot round by 10 foot deep pond in the back part by Mr. Steele's house so that when the water drains from the right side of the property onto my property the water has someplace to go, it's like a catch basin and then when the catch basin gets too high there's a pipe that will drain into and out onto my property. As far as the value of the property, I have been told that I have been actually offered quite a bit as far as the value of the property goes.

MR. KANE: For your property?

MS. MENKENS: For my property, yes.

MR. KANE: What about the commercial enterprise?

MS. MENKENS: When was that letter dated?

MR. TORPEY: February.

MS. MENKENS: At that time I was involved at Risky Business and the woman I was involved with owns Risky Business and she and I were kicking around the idea that we would work on a school but as the more I got into the horses I realized this is not something I want to do.

MR. LUNDSTROM: Just for the record, what type of business is Risky Business in?

MS. MENKENS: She's a western barrel racer.

MR. LUNDSTROM: Meaning what?

MS. MENKENS: She trains children how to become better at barrel racing, western barrels.

MS. GANN: Just curious why you have an eight horse stable.

MS. MENKENS: Needed room for hay and needed room for the tack room.

MS. GANN: And you couldn't put all that in the two shed barns?

MS. MENKENS: Yeah, they are here, they are in the center ones for the hay which I store 150 bales of hay and the other one's the tack room where I have the feed and our saddles so then there's three on this side and three on that side.

MR. KANE: Any further questions from the board?

MR. LUNDSTROM: Mr. Chairman, I'm somewhat confused here. The item before us is request for a variance to allow additional horses maintained 35 feet from the property line yet as I understand it the property is zoned only for two horses.

MR. KANE: Correct.

MR. LUNDSTROM: But now there's six horses there?

MS. MENKENS: Right.

MR. LUNDSTROM: And there has been no variance granted for that so that's currently in violation of the zoning code?

MS. MENKENS: Correct.

MR. LUNDSTROM: Another question that's been raised here is that according to the application you're looking for a permit for or a variance for a fence 35 feet from your property line, yet now you're presenting evidence in saying that you own 10 feet beyond that so it's actually--

MS. MENKENS: Not beyond the fence line.

MR. LUNDSTROM: But beyond the perceived property line so now you're saying it's 45 back. If I were to vote in favor, I would insist on seeing a surveyor's survey of your property marking where every parcel, where every fence is, where every building is resurveyed.

MR. BABCOCK: Well, Mr. Chairman, if I can the Keans submitted a letter from Bill Hildreth which is a land surveyor stating the fence is only 23 feet, 32 feet and 31 feet, I mean, that's an official survey, what she's saying although I understand she's saying it's, she owns farther than that, this is an official survey, official letter.

MR. KANE: That's why I asked her who measured it.

MR. BABCOCK: Is there minutes back from the last meeting? Do we have the minutes yet because Mr. Chairman we asked the applicant several questions about this stuff and I don't know that the applicant was up front with us totally, they told us that the horses weren't even here.

MS. MENKENS: No, they weren't there but I needed to get them home.

MR. BABCOCK: The application that she has is for 35 feet, the fence is not 35 feet, the paperwork that I submitted to this board is not correct based on her information, based on the survey she shows me she has a picture of the storage shed in her application, that's not what she built.

MS. MENKENS: No because when I talked to Lou--

MR. BABCOCK: But ma'am that's a complete application that's submitted to this board.

MS. MENKENS: But when I spoke to Lou, he told me that

that didn't meet the codes, the wind codes and the snow loads, so I asked him if I could replace it with something else.

MR. BABCOCK: I don't have anything.

MS. MENKENS: He gave me a sheet to fill out and then I had brought it back cause that one didn't meet the New Windsor standards so he said I needed to find a barn to meet the standards.

MR. BABCOCK: And you submitted that stuff back here?

MS. MENKENS: Yeah, with a new picture and everything.

MR. BABCOCK: According to the survey there's also an AT&T underground cable easement that goes right through the middle of this.

MS. MENKENS: I spoke to AT&T, Time Warner, Central Hudson.

MR. BABCOCK: We need something in writing from them.

MS. MENKENS: I have a number that they gave us.

MR. BABCOCK: No, you need something in writing from them. The other thing is there's some on her own survey it's got some locations of wetlands area that apparently she's in, I don't know what type of wetlands it is. One last quick thing, all my paperwork is wrong, it's not correct in any manner.

MR. KANE: This really actually with the horses it should go under a use variance too because you're changing the use of the property, it's not an area variance.

MR. BABCOCK: Especially with these pictures, I mean, I didn't visit the site, I went based on this information

that I sent this board is based on what they told me and this information that you have is not correct, these fences are not 35 feet from the property line, this thing is totally existing, this says proposed, all the stuff is proposed, not existing, the AT&T easement I'm not even sure of.

MR. KANE: Well, let's--

MS. LOCEY: I just feel that on July 10 when the preliminary meeting was held there was absolutely no doubt that the application was to bring more horses on the property and to construct a fence according to the application 35 feet from the property line and it was very clear that variances were needed to do both of those things. And I just feel this is a blatant disregard of the New Windsor zoning law because all of that was done before this process even had a chance to go forward and now when we're examining it, the application was wrong or was changed and those changes were never brought to your attention so they could be brought to ours.

MR. KANE: I think this is the way to proceed, personally, correct me if I'm wrong, since the application is basically wrong, I'm going to leave it, I can leave it to the applicant if you want us to vote on it tonight we can, we can dismiss it because the application obviously has a lot of wrong information in it and you can reapply and come back at some point I can allow you to do that. So those would be the two options that are available this evening.

MS. MENKENS: Dismiss it and I will reapply.

MR. SPINDLER: Until that time, what happens to the six horses?

MR. KANE: Until that time she's in violation, having those extra horses there they're in violation and the

building department can do whatever they need to be doing if there's a complaint filed.

MR. KRIEGER: Somebody has to file a formal complaint with the building inspector.

MR. KANE: I don't want to, not that I wouldn't want to see this issue put to bed this evening, I am just questioning us voting on it with improperly filed papers, I wouldn't like to get this into more of a legal mess. So my feeling is to really just toss it out at this point, let her file the proper application if the applicant wishes.

MR. KRIEGER: She indicated she wants to withdraw.

MR. KANE: Then she can try to go through the process again.

MR. KEAN: If the second course of action is decided upon to go through the process again we'll be able to submit additional evidence?

MR. KANE: It starts from square one and everybody proceeds from there. In the meantime, you've got a lot of violations on your property at this point so if the decision is up to you whether you want us to proceed or--

MS. MENKENS: If the current fence line that I have stays and I put up a 75 foot fence line within the fence that's not a violation?

MR. BABCOCK: Well, the issue of having two fences I don't see where it's necessary, you know, what I would be concerned about is that if you have a fence at 75 feet you just open the gate, let them go out in the other fence.

MS. MENKENS: Actually, my intentions were to have the

fence that's existing and on the property line put a fence, it's just a safety precaution in case the first fence breaks.

MR. KANE: Either way it's not for me alone to say, the board votes on that so it's not something I can say.

MS. MENKENS: Yeah, but the law is 75 feet.

MR. KANE: Two horses, yes, ma'am so your decision?

MS. MENKENS: I will start over from scratch.

MR. KANE: Withdraw the application without prejudice, okay.

MS. MENKENS: Yeah.

MR. KANE: We'll consider this application withdrawn. Thank you.

FORMAL\_DECISIONS

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KIRO  
BUSWEILER  
LUPINACCI  
MANDEL/MELNIK  
TOROMONIDIES  
GARCIA  
HURLEY  
BETTS  
GOMEZ  
PATRIOT PLAZA (4 SEASONS)  
PATRIOT PLAZA (BAKERS DOZ TOO)  
FAYO  
FARRELL  
HIGHLAND OPERATING  
REYNOLDS  
AM MART

PHIPPS  
MAZUREK  
LAWRENCE  
MT. AIRY 06-14  
MT. AIRY 06-15  
ALEMANY  
BERKOWITZ

MR. KANE: Formal decisions?

MR. LUNDSTROM: I move that the formal decisions that were presented to us be approved by this board in block.

MS. GANN: Second it.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. LOCEY	AYE



August 28, 2006

68

MR. KANE

AYE

Respectfully Submitted By:

Frances Roth  
Stenographer

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